

Psychiatric Expert Testimony

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INTRODUCTION

Recently, a new trial was granted to Andrea Yates, a Texas mother who drowned her five children in 2001, because of inaccurate testimony by a psychiatrist. This event highlights the important role psychiatrists play as experts in the courtroom.¹ Expert opinions are coming under greater scrutiny by judges, opposing lawyers, medical associations and state medical boards.² A psychiatrist may be either subpoenaed or hired to testify as an expert witness. Expert witnesses are people who have facts directly related to some type of science or profession that is beyond the average person's scope of knowledge. Only expert witnesses are permitted to offer opinions in court.³ Expert witnesses are expected to provide reasoned and/or factual support for their opinions through adequate preparation. Expert psychiatric testimony can be critical to psychiatric malpractice litigation and the use of the insanity defense in criminal cases.⁴ Since the laws covering this testimony may differ from state to state and from state court to federal court, an expert must be aware of the differences.

RULES OF EVIDENCE FOR MALPRACTICE/INSANITY

Rules of Evidence for experts are applied in both state and federal courts. They determine who can testify as an expert and to what they can testify.

The Federal Rules of Evidence state, "if scientific technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education,

may testify thereto in the form of an opinion or otherwise." [Rule 702. Testimony by Experts].

Also, the expert may "testify in terms of opinion or inference and give his reason therefore without prior disclosure of the underlying facts or data, unless the court requires otherwise.... [Rule 705. Disclosure of Facts or Data Underlying Expert Opinion]. [Also,] ...testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact."⁶ [Rule 704. Opinion on Ultimate Issue].

Tennessee's Rules of Evidence, as well as other states, may differ slightly from the Federal Rules above. In Tennessee, before admitting scientific evidence, a trial court must determine whether the evidence will "substantially assist the trier of fact to determine facts in issue and whether the facts and data underlying the evidence indicate a lack of trustworthiness." Tennessee also allows an expert to testify to an ultimate issue in a case, except an expert may not testify as to whether a defendant was or was not insane.⁶

STANDARDS FOR MALPRACTICE/INSANITY

Malpractice is considered a form of negligence and is usually tried in a state civil court. The standards for malpractice differ from state to state. In Tennessee, medical malpractice actions are governed by a local standard of care. Only doctors from Tennessee or a bordering state can testify as experts unless the court finds that there is no such expert available. The proof of malpractice is determined by a preponderance of the evidence.⁷ The standard of care is both a question of law

and fact, in which the fact finder is required to decide what society can expect of a doctor acting under certain specific circumstances. States usually determine this through case law and statutes.⁴

The insanity defense exempts certain defendants because of the existence of an abnormal mental condition at the time of the crime. In criminal state and federal courts, determining whether a person was insane at the time of the crime may determine their future sentencing. The various states differ significantly on what effects a mental illness must have had to entitle the defendant to an acquittal. Insanity is a legal term rather than a psychiatric one.

Some states, like Tennessee, require expert psychiatric testimony while others do not. Also in Tennessee, insanity if proven is considered a defense to the crime. A person (defendant) is insane if "at the time of the commission of the acts constituting the offense the defendant as a result of a severe mental disease or defect the person was unable to appreciate the nature or wrongfulness of such defendant's act." Under Tennessee law "mental disease or defect does not include any abnormality manifested solely by repeated criminal or otherwise antisocial conduct." This excludes the antisocial personality. In the Federal Courts and Tennessee, proof of insanity is determined by clear and convincing evidence.⁸

CONCLUSION

Medical reports or testimony may be required in 50-85 percent of all trials.³ This testimony may be through an expert witness. In many instances, expert witnesses are usually determined to be

necessary and thus afforded respect by the court. Psychiatric expert witnesses are often hired to testify in assisting the jury or judge in determining malpractice and/or insanity. Because of increasing scrutiny of an expert's opinions, psychiatric experts must assist the jury or judge in a fair and effective manner through knowledge of the law, a careful examination of the facts and by obtaining all relevant data. In addition to a thorough preparation, the psychiatric testimony must be as honest and accurate as possible.⁹ ■

References

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